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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF:

CALUMET SLAG, INC.
An Arizona Corporation
14344 N. 16th Avenue
Phoenix, Arizona 85029

GARETH N. PATTON
23769 Blue Lead Mountain Road
Hill City, South Dakota 57745

JEFFREY G. CRAWFORD
1822 N. Barkley
Mesa, Arizona 85203

MATTHEW E. HUNZINGER
13031 N. 59th Drive
Glendale, Arizona 85304,

Respondents.

DOCKET NO. S-03361A-00-0000

Arizona Corporation Commission

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DECISION NO. 63873

OPINION AND ORDER

DATES OF HEARING: October 4, 5 and 25, 2000
PLACE OF HEARING: Phoenix, Arizona
PRESIDING ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Mr. Michael Salcido, on behalf of Mr. Gareth N. Patton;
Ms. Jennifer Boucek, Assistant Attorney General; and
Mr. Janie B. Palfai, Special Assistant Attorney General,
on behalf of the Securities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

On April 21, 2000, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order for Relief ("Notice") against Calumet Slag, Inc. ("Calumet"), Mr. Gareth N. Patton, Mr. Jeffrey G. Crawford, and Mr. Matthew E. Hunzinger in which the Division alleged multiple violations of the

1 Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of
2 shares of stock in Calumet.

3 The Respondents were all duly served with copies of the Notice.

4 On April 27, 2000, Mr. Hunzinger filed a request for a hearing.

5 On May 2, 2000, Mr. Crawford filed a request for a hearing.

6 On May 4, 2000, by Procedural Order, the Commission scheduled a pre-hearing conference to
7 take place on May 25, 2000.

8 On May 18, 2000, Calumet filed a request for a hearing.

9 At the May 25, 2000, pre-hearing conference, counsel for Mr. Patton appeared and requested
10 a hearing. After discussions between the parties, it was agreed that an additional pre-hearing
11 conference should be held on June 13, 2000.

12 On June 8, 2000, by Procedural Order, the pre-hearing conference scheduled for June 13,
13 2000, was continued to June 23, 2000.

14 On June 23, 2000, during the second pre-hearing conference, counsel for the respective
15 parties indicated that settlement discussions were being conducted, but additional time was needed
16 prior to a hearing being scheduled. Pursuant to a stipulation, the hearing was scheduled to commence
17 on August 21, 2000.

18 On August 7, 2000, Respondent Hunzinger filed a Motion to Continue ("Motion") the hearing
19 scheduled for August 21, 2000, because it was alleged that additional time was required to negotiate
20 to settlement.

21 On August 11, 2000, Respondent Calumet indicated that it did not oppose the Motion filed on
22 behalf of Mr. Hunzinger.

23 On August 14, 2000, the Division filed its response opposing the Motion.

24 Subsequently, on August 15, 2000, Respondent Patton joined in the Motion filed on behalf of
25 Hunzinger.

26 On August 16, 2000, the Commission, by Procedural Order, denied Mr. Hunzinger's Motion.

27 On August 17, 2000, Respondent Hunzinger filed a Motion to Reconsider the denial of his
28 Motion and a teleconference was conducted on that date with the Division and all parties represented

1 by counsel. Good cause was shown for a brief continuance and the proceeding was continued to
2 September 12, 2000.

3 On September 8, 2000, the Division filed a Motion requesting an indefinite continuance with
4 respect to Respondents Calumet, Crawford and Hunzinger to allow time for Consent Orders¹ to be
5 submitted for Commission approval and to modify the date for the commencement of the hearing
6 with respect to Respondent Patton until September 18, 2000. There were no objections and the
7 Motion was granted and the hearing continued until September 18, 2000 with respect to Respondent
8 Patton.

9 On September 14, 2000, counsel for the Division and Respondent Patton telephonically
10 contacted the presiding Administrative Law Judge and requested a further continuance due to a recent
11 death in Mr. Patton's family. The Division did not object to this request and the parties stipulated
12 that the proceeding would be continued until October 4, 2000.

13 On October 4, 2000, a full public hearing was commenced before a duly authorized
14 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Respondent and
15 the Division appeared and were represented by counsel. Testimony was taken and more than 40
16 exhibits were admitted into evidence during the course of the proceeding. Following the conclusion
17 of the hearing, closing memoranda were submitted on December 4, 2000. The matter was then taken
18 under advisement pending submission of a Recommended Opinion and Order to the Commission.

19 * * * * *

20 Having considered the entire record herein and being fully advised in the premises, the
21 Commission finds, concludes, and orders that:

22 **FINDINGS OF FACT**

23 1. Mr. Patton, whose last known address is 23769 Blue Lead Mountain Road, Hill City,
24 South Dakota 57745 was, at all relevant times, a founder, an incorporator, a director and the first
25 president of Calumet after it was incorporated in Arizona on August 18, 1992.

26 2. On April 21, 2000, the Division issued the Notice alleging violations of A.R.S. §§ 44-

27 ¹ On October 10, 2000, the Commission in Decision Nos. 62920, 62921 and 62922 approved Consent Orders
28 against Calumet, Mr. Crawford and Mr. Hunzinger, respectively, wherein these Respondents were ordered to cease and
desist from further violations of the Act and ordered to make restitution and pay administrative penalties.

1 1841, 44-1842 and 44-1991 against Mr. Patton and the other above-named Respondents.

2 3. Sometime in 1991, Respondent Patton met a Phoenix dentist, Dr. Joseph Atkins,
3 through a co-worker in the construction business. According to Mr. Patton, Dr. Atkins came up with
4 the idea to form a corporation (Calumet) and transfer the ownership of a slag pile owned by Mr.
5 Patton to the corporation, and in return Mr. Patton would receive 750,000 shares of stock.

6 4. At that time, Mr. Patton had very little experience with the formation of a corporation
7 and he was relying on the experience of Dr. Atkins and a number of other investors/incorporators
8 who he did not know very well.

9 5. Following Calumet's incorporation on August 18, 1992, Calumet's board authorized
10 the issuance of 1,000,000 shares of stock and acquired Mr. Patton's slag pile in the Black Hills of
11 South Dakota in return for 750,000 shares of Calumet's stock. The remaining 250,000 shares of
12 treasury stock were sold to other incorporators for \$.25 a share.

13 6. Mr. Patton testified that he had acquired the slag pile from his aunt, Ms. Ardean
14 Rogers, and that it is located on land owned by him and his aunt that had been acquired by family
15 members in 1923. When Mr. Patton acquired his interest in the slag pile in June 1992, he also
16 acquired some surrounding land areas, three adjacent tailing dumps, and several defunct mining sites.

17 7. According to Mr. Patton, Calumet's initial capitalization raised approximately \$60,000
18 from the sale of its remaining 250,000 shares of treasury stock to incorporators. Dr. Joseph Atkins,
19 the Phoenix dentist, then encouraged him to sell his stock to investors in blocks of varying sizes with
20 the understanding that the funds collected from these sales would be deposited into his personal
21 accounts and that he would then loan funds to the corporation to pay its operating expenses when
22 necessary and "then when it gets going, they would pay me back the money."

23 8. Mr. Patton's understanding was that approximately 75 percent of the monies invested
24 would go towards Calumet's expenses and that he would retain the balance as compensation for his
25 services as Calumet's President² and to pay his living expenses.

26 9. On or about October 31, 1993, Mr. Jerry Wagner and Mr. Don Rice ("J&D"), two
27

28 ² Mr. Patton was the President of Calumet for approximately eight years until he resigned his position after the Commission brought the present action.

1 individuals from Rapid City, South Dakota, entered into a contract with Calumet at the behest of Mr.
2 Patton whereby Calumet agreed to provide slag to J&D who would process and refine the slag in
3 return for either a 50 percent share in the profits or 50 percent of the refined metals.

4 10. This contract resulted in a subsequent lawsuit in July 1994 brought by J&D in South
5 Dakota against Calumet claiming an undetermined amount of damages. J&D also filed a mechanic's
6 lien on Calumet's slag pile for \$450,000,000 allegedly to pay for the removal and the processing of
7 the slag pile and to insure payment due under the contract. This litigation was ongoing until 1996 at
8 which time Mr. Patton and Calumet's board elected to settle the lawsuit brought by J&D. After the
9 settlement (approximately \$60,000) was paid, the lawsuit was dismissed and the lien released.

10 11. During 1994 Mr. Patton and Respondents Crawford and Hunzinger began to promote,
11 offer and sell Mr. Patton's stock in Calumet to local Arizona investors. During the stock sales, the
12 shares controlled by Mr. Patton were sold to investors at prices varying from \$.25 per share to \$5 per
13 share.

14 12. Mr. Patton acknowledged that he received between \$400,000 and \$450,000 from the
15 sales of his shares of stock in Calumet between 1994 and 2000. He insisted that he expended
16 approximately \$360,000 of these funds on expenses incurred by Calumet, with the remainder being
17 utilized for his family's living expenses during the relevant timeframe.

18 13. Mr. Patton believed that investors understood that they were purchasing his personal
19 stock because investors' checks were made out to him for their stock purchases and not to Calumet.

20 14. Based on the record, a number of Calumet's incorporators, officers and/or directors
21 were involved in the sales of Mr. Patton's stock in Calumet.

22 15. The stock shares offered and sold by Mr. Patton and others were not registered as
23 securities.

24 16. Mr. Patton was not registered as a dealer or a salesman during the period in which his
25 shares were offered and sold.

26 17. In support of its case, the Division called four investor witnesses, three expert
27 witnesses, a Division investigator and a rebuttal witness as follows: Mr. Suleiman Hawash; Mr. Carl
28 Hagen; Mr. Dirick Overham; Mr. Walter Foley; Mr. Robert Blakestead, an engineer/geologist with

1 Cyprus Amax Mineral Companies ("Cyprus"); Mr. Edward Kerr, Jr., a consulting geologist
2 employed by Cyprus; Mr. Gary Mengel, a Division Certified Public Accountant ("CPA"); Ms.
3 Margaret Pollard, a former investigator for the Division; and Mr. Nyal Niemuth, a mining engineer
4 with the Arizona Department of Mines and Mineral Resources.

5 18. Mr. Hawash, a self-employed businessman who sells Indian jewelry and gifts, first
6 learned of Calumet from one of his customers who was his stockbroker, Mr. Ron Delmanowski. Mr.
7 Delmanowski described the offering to Mr. Hawash as "a big opportunity to invest in a mining
8 company that have a good return for it."

9 19. Mr. Delmanowski raised the idea of investing in Calumet to Mr. Hawash during 1994
10 and told Mr. Hawash that, if he was interested, Mr. Hawash could meet his son-in-law, Respondent
11 Crawford, along with Respondents Patton and Hunzinger who were all involved in Calumet.

12 20. In September 1994, Mr. Delmanowski invited Mr. Hawash to a smelting
13 demonstration in Chandler, Arizona where Mr. Patton, Mr. Hunzinger, Mr. Crawford and his wife,
14 Judy (Mr. Delmanowski's daughter), were present.

15 21. During the so-called smelting demonstration, Mr. Patton pointed out to Mr. Hawash
16 that there were signs of gold, silver and platinum in the metal bars that were made by melting "a
17 black pile of sand" that Mr. Patton and his associates owned.

18 22. Mr. Hawash described a discussion with Mr. Patton during which he was told if he
19 invested that "the return would be really tremendous".

20 23. On September 28, 1994, Mr. Hawash made his first investment in Calumet and gave
21 Mr. Patton a check for \$10,000 for 10,000 shares of Mr. Patton's Calumet stock.

22 24. At this time, neither Mr. Patton nor any of the other above-named Respondents
23 provided Mr. Hawash with any documentation concerning Calumet, the risks in investing in a mining
24 venture, or inquired about his prior investment experience.

25 25. Further, no mention was made of any pending litigation against Calumet or the multi-
26 million dollar lien that was outstanding against the company.

27 26. At the time of Mr. Hawash's initial investment, he believed that his monies were
28 going to be used for some of the start-up expenses associated with developing a smelter to process

1 Calumet's slag pile.

2 27. On November 11, 1994, Mr. Hawash gave Mr. Patton a second check for \$5,000 to
3 purchase more of Mr. Patton's stock in Calumet.

4 28. According to Mr. Hawash, at a shareholder meeting in December 1994, Mr. Patton
5 and another investor, Dr. Atkins, indicated that Cyprus was going to process the slag pile for Calumet
6 in approximately 2 to 3 months. Mr. Patton also mentioned that a dividend would then be issued.

7 29. During this timeframe, Mr. Hawash believed that Cyprus was interested in taking over
8 the slag pile. At no time was he told that Cyprus had rejected the Calumet project.

9 30. Mr. Hawash testified that on March 15 and 24, 1995, he invested \$10,000 for 4,000
10 shares at \$2.50 a share and another \$10,000 for 8,000 shares at \$1.25 a share. On both occasions, Mr.
11 Hawash's checks were made out to Mr. Patton.

12 31. Mr. Hawash did not recall, at the time of these investments, Mr. Patton making any
13 disclosures about the financial condition of Calumet, the risks associated with the investments or the
14 legal actions which had been commenced against Calumet.

15 32. Although Mr. Hawash understood that his checks were being deposited into Mr.
16 Patton's personal account, he believed the monies would be used to move the slag to a refining
17 facility.

18 33. Mr. Hawash recalled learning about J&D's pending lawsuit and lien against Calumet
19 during a shareholder meeting and was surprised by the information. However, Mr. Patton and
20 Respondent Crawford continued to request investors to purchase more stock in Calumet.

21 34. Mr. Hawash recalled that on several occasions he requested financial information on
22 Calumet from Mr. Patton, but he did not receive any.

23 35. In spite of this situation, Mr. Hawash continued to invest in Calumet and on October
24 6, 1996, he purchased 30,000 more of Mr. Patton's shares for \$22,500 or \$.75 a share. At this point,
25 Mr. Hawash was under the impression that he was receiving a special price for Mr. Patton's stock.

26 36. Mr. Hawash indicated that he continued to invest these monies because Mr. Patton had
27 told him he wanted to settle the J&D lawsuit and get on with Calumet's business.

28 37. Mr. Hawash continued to invest with Calumet and on November 19, 1997, invested

1 another \$6,000 with Mr. Patton for 3,000 more of his Calumet shares. Purportedly, these funds were
2 to be used to pay for the removal and trucking of slag to a Montana processing plant.

3 38. All told, Mr. Hawash invested \$118,000 in Mr. Patton's stock in Calumet after being
4 introduced to him by his stockbroker, Mr. Delmanowski. Mr. Hawash never saw a return on his
5 investments.

6 39. Based on the record, it is apparent that Mr. Hawash was influenced to invest
7 repeatedly in Calumet by other investors and/or incorporators. Additionally, Mr. Hawash
8 acknowledged that he also introduced other investors to the Calumet offering.

9 40. Mr. Carl Hagan, a college professor, testified that he learned about Calumet from Mrs.
10 Joyce Delmanowski, Mr. Crawford's mother-in-law. He recalled that prior to investing, Mr. Patton
11 showed him a favorable assay report.

12 41. However, Mr. Patton made no mention to Mr. Hagan of the litigation or the lien which
13 had been placed on Calumet's assets.

14 42. On or about August 19, 1995, Mr. Hagan paid Mr. Patton \$10,000 (\$1.25 per share)
15 for 8,000 shares of his stock.

16 43. On November 5, 1996, Mr. Hagan, after attending a promotional meeting at a
17 restaurant in Tempe, Arizona, bought another 1,000 shares of stock for \$1,000 by mailing another
18 check to Mr. Patton.

19 44. Mr. Hagan related how at a subsequent shareholders' meeting a heated exchange took
20 place between himself and Mr. Patton when he questioned how money was being spent and that he
21 was not receiving any answers to his questions about Calumet.

22 45. Mr. Hagan indicated that in hindsight, if he had known that he was purchasing Mr.
23 Patton's shares in Calumet, he would not have invested.

24 46. It was not until after making his investments that Mr. Hagan learned from a document
25 provided to him that large sums of money were owed by Calumet for loans and back salaries to Mr.
26 Patton and others.

27 47. Mr. Hagan indicated that since investing \$11,000, he has not received any income on
28 his investment.

1 48. Mr. Dirick Overham, a retired military man, also learned about Calumet from Mrs.
2 Delmanowski.

3 49. Mr. Overham testified that Mr. Delmanowski had made an appointment and attended a
4 meeting with him attended by Mr. Patton, Mr. Crawford and Mr. Hunzinger. Mr. Overham indicated
5 that he considered Mr. Delmanowski his "financial advisor" because he had bought stocks and other
6 securities through him.

7 50. Mr. Patton was introduced as the president of Calumet, Mr. Crawford as the vice-
8 president and Mr. Hunzinger as the secretary-treasurer. Mr. Overham testified that this meeting was
9 "very unprofessional", but since Mr. Delmanowski was present, he believed that the mining operation
10 would probably be profitable.

11 51. Although Mr. Overham was made aware of the litigation and possible settlement that
12 was being considered, he was unaware of any other debts owed for back salaries and other related
13 company expenses.

14 52. Mr. Overham understood that, if he invested any monies in the project, Calumet's first
15 priority was to liquidate the lien, with the remaining monies to be applied toward the refining
16 operation for the gold, silver and platinum referenced by Mr. Patton.

17 53. On or about April 29, 1996, Mr. Overham invested \$20,000 by giving a bank check to
18 Mr. Hunzinger that was payable to Mr. Patton.

19 54. Mr. Overham recalled during his meeting with Mr. Patton and the others that no one
20 disclosed any risks associated with an investment in a mining venture and he assumed that it would
21 be a safe investment because of Mr. Patton's reference to a 25 to 1 return on an investment.

22 55. At the conclusion of his testimony, Mr. Overham indicated that he has not received
23 any return on his investment and believes that it is totally worthless.

24 56. Mr. Walter Foley, a retiree with an accounting background, first learned about an
25 opportunity to invest in Calumet in November 1997.

26 57. Mr. Foley testified that he heard that Calumet was involved a gold reclamation project,
27 "and there was supposed to be a lot of money to be made there."

28 58. On November 24, 1997, Mr. Foley wrote Mr. Patton a check for \$2,000 and mailed it

1 to him to pay for his investment. However, prior to that time, Mr. Foley had not received any
2 information from the company and no one had discussed any risks associated with the investment.

3 59. On April 15, 1998, Mr. Foley received a Calumet stock certificate representing the
4 2,000 shares which he had purchased.

5 60. Mr. Foley received his stock certificate at a Calumet shareholder meeting where Mr.
6 Patton conducted a slide show presentation showing the reclamation of gold from slag. Another
7 investor, Mr. Jim Hurley, knew that Mr. Foley had work experience "bean counting" and suggested
8 that he help organize Calumet because of its disorganized business operations.

9 61. In furtherance of the plan of organization, Mr. Foley contacted Mr. Jeff Crawford, the
10 secretary-treasurer of Calumet, and asked him to bring the company books over so that he could
11 review the records. When Mr. Crawford came to Mr. Foley's house in approximately May or June
12 1998, he brought over Calumet's business records consisting of three envelopes "filled with receipts
13 for business trips that had been made in the name of Calumet Slag."

14 62. On August 18, 1998, Mr. Foley wrote a letter to Mr. Patton in Keystone, South Dakota
15 advising him that he wanted to sell his 2,000 shares of Calumet and resigning his position as
16 "treasurer" of Calumet.

17 63. About a month later, another investor, Mr. Joe Atkins, Jr., the son of Dr. Atkins, called
18 Mr. Foley and asked him if he would again be willing to help Calumet organize its books and
19 records.

20 64. Mr. Foley agreed and as the first order of business, Mr. Foley attempted to verify who
21 owned stock in Calumet. He and Mr. Atkins sent out letters to people whose names appeared on an
22 old list of stockholders and began to see some inconsistencies develop.

23 65. Mr. Foley found that his stock certificate had been issued three times and he found
24 other investors who had invested, but did not receive any stock certificates. Mr. Foley also found
25 other investors whose stock certificates had been duplicated.

26 66. Based on Mr. Foley's and Mr. Atkins' review of the outstanding stock, they found that
27 at times, the number of outstanding shares was more than the 1,000,000 shares which Calumet was
28 authorized to issue.

1 67. Mr. Foley reviewed the trial balance sheets sent to him by Mr. Crawford and found
2 various inconsistencies in the expenses claimed to have been expended on behalf of Calumet.
3 Additionally, no explanations were provided to resolve any of the inconsistencies which Mr. Foley
4 noted.

5 68. At one point during March 1999, Mr. Foley believed that Calumet had 1,005,500
6 shares of outstanding stock, but was unable to determine the total amount of funds invested in
7 Calumet. At one point he estimated that approximately \$644,987 had been invested.

8 69. Mr. Foley also indicated that he has thus far received no return on his investment.

9 70. The Division called Mr. Robert Blakestead to testify on the estimated value of
10 Calumet's slag pile. During the timeframe in question, Mr. Blakestead was the North American
11 Exploration Manager for Cyprus and the Vice-President of Exploration for AMAX Gold, Inc. He
12 was in charge of Cyprus' exploration activities, including technical and administrative matters for a
13 number of the company's offices in Canada, the U.S. and Central America.

14 71. Mr. Blakestead testified that in the fall of 1994, Cyprus responded to a request from
15 Mr. Patton regarding a Calumet proposal for Cyprus to refine its slag pile. Cyprus sent a consultant,
16 Mr. Edward Kerr, Jr., who was very familiar with the geology and geological history of the area
17 where Calumet's slag was located "to evaluate the mineral occurrences and the purported potential of
18 the various mine dumps and slag piles and that sort of thing that existed on the property."

19 72. Mr. Blakestead testified that he wrote a letter on December 2, 1994, to Mr. Patton with
20 respect to Mr. Kerr's initial evaluation performed on Calumet's slag pile and on Mr. Patton's
21 personally owned mine dumps located on Mr. Patton's property in South Dakota.

22 73. Mr. Blakestead's letter states "there are no significant values in gold or silver in the
23 mine dumps or slag heap material."

24 74. Cyprus' consultants had found a very limited amount of material, stating that the
25 material lacked any significant value in gold, silver, copper and nickel which would interest Cyprus.
26 Mr. Blakestead indicated that there was a possibility that some potential could be found in the
27 original underground mine workings and was interested in conducting a further evaluation of the
28 property on that basis,

1 75. Mr. Blakestead termed his letter a "rejection letter" sent to Mr. Patton based on the
2 evidence that Cyprus had gained from the consultant's examination of the grounds and records that
3 were available.

4 76. Although Mr. Blakestead recalled that Mr. Patton had represented that his slag pile
5 contained quite high values in refineable gold, silver, platinum and copper, Cyprus' analysis
6 indicated the virtual absence of those metals.

7 77. Mr. Blakestead recalled that, in reviewing data furnished by Calumet and Mr. Patton,
8 the data contained mathematical inaccuracies with respect to the concentrations of precious metals
9 and the information came from a laboratory with which Cyprus was unfamiliar.

10 78. Mr. Blakestead also pointed out an additional inconsistency in that his consultant, Mr.
11 Kerr, estimated the tonnage of the slag pile at 500 tons and not the 5,000 tons claimed by Mr. Patton
12 and Calumet.

13 79. Mr. Blakestead believed that the value of the slag pile based on its gold content would
14 be approximately \$100,000, which rendered it economically unfeasible for further refining for gold.

15 80. At no time was Cyprus interested in purchasing the mine site which was owned
16 separate and apart from the slag pile owned by Mr. Patton and his aunt.

17 81. Mr. Kerr, a geologist with 35 years experience, was retained by Mr. Blakestead as a
18 consultant for Cyprus and conducted the evaluation of Calumet's slag pile.

19 82. Mr. Kerr was recognized as an expert in geological surveys without objection.

20 83. Mr. Kerr explained what was involved in conducting a geological survey stating that
21 the methodology varied extensively based on the property and its size and the circumstances at the
22 time of a visit to the site. He testified that "for a raw submittal property valuation, one would review
23 the data provided by the client or the property owner, check literature, you would obtain maps, air
24 photos or other materials covering the property."

25 84. Mr. Kerr stated further that "a visit to the property is usually conducted to map, collect
26 samples, and at that time, you would determine whether the property, you know, meets the
27 expectations of the company or the client."

28 85. Mr. Kerr recalled conducting a geological survey on or about November 15, 1994, at

1 the site of Calumet's slag pile to evaluate the potential for gold exploration on the property. He
2 remembered that he had met with Mr. Patton and several other individuals in Keystone, South
3 Dakota, and then toured the property for several hours.

4 86. Mr. Kerr testified that he was told by Mr. Patton that the three old mine dumps and the
5 slag pile were the only areas that he was to evaluate for Cyprus.

6 87. Mr. Kerr testified that he observed the slag pile and took one sample from it,
7 acknowledging that he did not take any measurements from the pile.

8 88. Mr. Kerr had been told that Mr. Patton and his aunt, Ms. Ardean Rogers, owned the
9 property and mineral rights where the slag pile was located.

10 89. After reviewing the data provided by Cyprus, visiting the site, meeting with Calumet's
11 president and others, making notes on his observations during the tour, mapping and sampling the
12 mine dumps and slag pile, he prepared a summary report which he sent to Cyprus.

13 90. Mr. Kerr submitted assays on the samples to an independent laboratory as requested
14 by Cyprus. After Mr. Kerr's review of the information that he developed from his visit to the mine
15 site and the lab results, Mr. Kerr concluded that the mine dumps owned by Mr. Patton and his aunt
16 and the slag pile owned by Calumet would be of no interest to Cyprus.

17 91. Additionally, Mr. Kerr noted that the tonnage of the material located on Mr. Patton's
18 property was significantly less than that which had been represented by Cyprus.

19 92. According to Mr. Kerr, Mr. Patton told him that he was primarily to evaluate the area
20 of the mining dumps which were not owned by Calumet. However, he did state that Mr. Patton told
21 him that the slag pile "was a separate entity and that he was seeking investors for that separately."

22 93. Based on Mr. Kerr's review of old reports concerning precious mineral recoveries in
23 the immediate area of the Calumet site, he found that there had been very few precious metal values
24 associated with the property and "it was essentially a copper prospect, and there were minor amounts
25 of gold and silver reported."

26 94. Mr. Kerr testified that, based on his experience, a slag pile would have less precious
27 metal than the original materials which were mined because the slag represents the waste product
28 from the smelting process.

1 95. Upon Mr. Kerr's review of the assay report from Cone Geochemical, Inc., a highly
2 reputable Colorado lab, he stated that, based on the report, it was not economically feasible to refine
3 the slag for anything other than less than trace amounts of either gold or silver.

4 96. In a letter to Mr. Blakestead at Cyprus, Mr. Kerr described the Patton/Rogers property
5 being divided into three areas of interest as follows: the surface and mineral rights owned by Mr.
6 Patton and his aunt; the Gray Eagle Mining and Milling Company (incorporated by Mr. Patton, Mr.
7 Hunzinger and his aunt to dispose of the three mine dumps); and the slag pile owned by Calumet,
8 which at that time purportedly had 84 shareholders. Mr. Kerr had the impression that Mr. Patton
9 wanted to have the dumps and the slag removed from his property so that Mr. Patton could build a
10 home and subdivide the property which he owned with his aunt.

11 97. According to the Division's investigator at the time, Ms. Margaret Pollard,
12 approximately 180 investors may have invested in Calumet.

13 98. Based on records reviewed by the Division's investigator, Mr. Patton had been filing
14 reports with the Department of Environment and Natural Resources in South Dakota during the mid
15 to late 1990s, which stated that no work had been completed on the slag pile.

16 99. Additionally, the Division's investigator found that Annual Reports filed with the
17 Commission's Incorporating Division by Calumet indicated that from 1994 to 1996 no business was
18 conducted.

19 100. During Ms. Pollard's investigation, she found that investor checks were deposited into
20 the accounts of both Mr. Patton and Mr. Crawford, Calumet's vice-president during the period in
21 question. Ms. Pollard estimated that approximately \$400,000 of the invested funds were deposited
22 into Mr. Patton's bank account, and that as much as \$100,000 more in investor funds may not have
23 been traceable to any particular deposits.

24 101. According to Mr. Gary Mengel, the Division's CPA, he found that more than
25 \$450,000 of investor funds were deposited into Mr. Patton's personal bank accounts which sum was
26 confirmed with bank documents.

27 102. The Division's CPA found that Mr. Patton had made some payments to an attorney for
28 Calumet and for slag hauling; however, some funds were also utilized to pay personal expenses such

1 as medical bills, insurance bills, grocery bills and other household expenses.

2 103. Mr. Patton claims that the slag heap owned by Calumet consists of 5,000 tons of
3 material of which 95% is granulated silicon glass and the remainder of the materials are metals.

4 104. There is a serious discrepancy between the size of the slag heap as claimed by Mr.
5 Patton, between 4,000 and 5,000 tons, versus that described by Mr. Kerr's report - "a very crude
6 estimate of the smelter slag is 500 tons."

7 105. Mr. Patton insists (even though he was under no obligation to pay Calumet's expenses
8 from the funds raised by the sale of his stock) that the plan was to get the slag pile processed with as
9 little expense as possible, thus leaving him with a substantial number of shares (because he believed
10 that he would not have to sell a significant portion of his 750,000 shares of stock to fund Calumet's
11 expenses) and that he would receive his return based on retaining his ownership of a large block of
12 Calumet stock.

13 106. Mr. Patton had not expected that so many of his shares would need to be sold off to
14 get the slag pile processed, thereby reducing his potential for a large share of the purported profits.

15 107. Mr. Patton believed that if the slag pile had been productive early on, he would have
16 had a substantial number of the shares and benefited highly from the Calumet's profits. However, he
17 attributes the delays and resultant expenses as the cause of his reduced potential for profits.

18 108. Although Mr. Patton admitted that Calumet's stock was sold for varying prices, he
19 believes that approximately half (500,000) of the outstanding shares sold for approximately \$.48 a
20 share.

21 109. Based on Mr. Patton's own admission, he sold shares of his stock in Calumet to at
22 least 30 investors. However, the majority of his shares were sold by other incorporators and/or
23 officers of the corporation.

24 110. Mr. Patton testified that he "loaned" money to Calumet when he paid various expenses
25 during the timeframe in which he was the President of Calumet.

26 111. In support of his claim that his payments of Calumet's expenses were loans, Mr.
27 Patton offered a copy of a June 17, 1996 promissory note in the amount of \$60,000 which was made
28 payable to him from Calumet. The note had been signed by its then secretary/treasurer, Mr.

1 Hunzinger. According to Mr. Patton, these funds were used to settle the J&D litigation which had
2 been pending against Calumet since 1994.

3 112. Mr. Patton contends that by the end of 1998 he had expended approximately \$360,000
4 from the monies received from the sale of his stock for Calumet's business expenses. However, Mr.
5 Patton could not produce cancelled checks or paid receipts to substantiate the amounts purportedly
6 paid, except for the note dated June 17, 1996 in the amount of \$60,000.

7 113. Additionally, Mr. Patton further contended that the shareholders insisted that he
8 devote all of his work time from 1994 to 1998 on the Calumet project and that they understood that
9 he was retaining a portion of the monies collected from the sale of his stock as compensation for his
10 efforts.

11 114. There was also evidence of Mr. Patton paying Calumet's expenses in the form of a
12 \$12,538 wire transfer from Mr. Patton to M&W Milling and Refining, Inc. ("M&W") which payment
13 Mr. Patton also classified as a "loan" to pay for a 1996 pilot mill run. However, no evidence of a
14 properly executed promissory note from Calumet was submitted to validate this claimed expense.

15 115. Mr. Patton further testified that he expended approximately another \$17,382 to pay
16 Calumet's legal expenses to resolve the 1994 J&D litigation.

17 116. Mr. Patton also submitted evidence which he had secured from Calumet's present
18 secretary/treasurer in the form of a long list of expenses listed as paid by Mr. Patton through October,
19 2000, totaling \$109,129.22 which sum has not been reimbursed by Calumet.

20 117. Mr. Patton introduced the test results by other entities from samples purportedly from
21 the slag pile reflecting more than trace elements of gold, with purported averages of 1.32 ounces per
22 ton.

23 118. Mr. Patton contended that the slag pile, if it weighed 4,000 tons³, would contain at
24 least 4,000 ounces of gold worth approximately \$300 per ounce or \$1.2 million.

25 119. Mr. Patton presented evidence that on or about August 6, 1991, he had received a
26 report which describes the contents of the slag pile from Bahamian Refining Services & Mining
27

28 ³ This size estimate came from the purported calculations of an individual with M&D.

1 Equipment Company ("Bahamian") located in Phoenix and signed by a Mr. Fred Finell, Jr., its
2 president. The Bahamian report indicated that, in places, Mr. Patton's slag pile contained from 1.5 to
3 1.19 ounces of gold per ton and from .33 to 2.9 ounces of silver per ton.

4 120. Another document submitted by Mr. Patton was an agreement between Calumet and
5 another company by the name of Nizer, Inc. ("Nizer") dated July 1, 1994 and signed by Mr. Patton
6 and a Nizer official. The parties agreed that Calumet would supply 10 tons of slag to Nizer for
7 processing and refining in return for a right to 50 percent of the proceeds when the refined metals
8 were sold. Purportedly, Nizer had tested the metals and the agreement contains a guarantee by Nizer
9 that states "Nizer warrants that the minimum value of the recoverable valuable metals contained in
10 the slag to be \$5 per pound."

11 121. Using Nizer's estimates, the projected the value of the slag pile could be as high as
12 \$40 million if, in fact, there was \$5 per pound of valuable metal in the slag pile. However, even Mr.
13 Patton acknowledged that this figure was outlandish.

14 122. M&W of Virginia City, Montana provided documents that were inconclusive, and
15 ended with a letter dated September 24, 1997, by Mr. Charles Donegan, Chief Metallurgist, who
16 stated the following: "It appears that this material cannot be economically leached mainly due to the
17 severe locking of the values in the slag to the point where the solution can't reach them."

18 123. Mr. Patton denied that he had altered a sample of slag which he had sent to Mr.
19 Hawash. Mr. Hawash submitted the sample to a company by the name of Bondar Clegg that, after
20 further testing, submitted a report which found "extremely high" amounts of gold.

21 124. Mr. Patton acknowledged that his original intent was just to get the slag pile removed
22 from his property to improve its looks, but this project developed into the Calumet offering.

23 125. During cross-examination, Mr. Patton also admitted that he had not provided any
24 financial information to investors in Calumet.

25 126. Based on the record, depending upon the actual size of the slag pile, and depending
26 upon its ultimate use, the slag pile could either be worthless if there are no economical methods to
27 further refine the remaining metals or worth possibly in excess of \$1 million if the slag is able to be
28 refined and it contains enough valuable metals which can be extracted. Although the slag pile has

1 some potential for its use as an asphalt sealer, investors would not see any profits from this type of
2 utilization.

3 127. As a rebuttal witness, the Division called Mr. Nyal Niemuth, a mining engineer with
4 the Arizona Department of Mines and Mineral Resources, who testified following a review of some
5 of the documents concerning the contents of the slag pile and its possible uses.

6 128. Mr. Niemuth's testimony cast doubt on the Bahamian report and he further testified
7 that he did not believe that Mr. Finell of Bahamian was a registered assayer or metallurgical engineer
8 in Arizona. However, he could shed no light on the issue of whether any of the reports that he
9 examined on the slag pile in South Dakota were accurate enough to determine the slag pile's value or
10 lack thereof.

11 129. Under the circumstances, although Mr. Patton presented evidence that Calumet's slag
12 pile had some value, due to the fact that the favorable reports' authors were not present to be cross-
13 examined, their findings of potential value do not carry the same weight as the findings presented by
14 Mr. Blakestead and Mr. Kerr who were subject to cross-examination.

15 130. Based upon the record and the weight of the evidence, it is clear that the investment
16 opportunity offered and sold in the form of shares of stock in Calumet by Mr. Patton and others were
17 violative of the Act. It is clear that the shares were unregistered stock, that Mr. Patton was an
18 unregistered dealer or salesman and that elements of fraud were utilized to promote the sales through
19 both omissions and misrepresentations of material fact.

20 131. With respect to the offer and sale of the stock in Calumet by Mr. Patton:

- 21 • Mr. Patton grossly overstated the value of the slag pile in South Dakota when he
22 was selling his shares;
- 23 • Mr. Patton failed to disclose the mechanic's lien which had been placed on the slag
24 pile in the amount of \$450 million and the lawsuit for half of the slag pile's value
25 when his stock was being sold, while the litigation was pending from July 1994 to
26 July 1996;
- 27 • Mr. Patton failed to make adequate disclosure to investors that they were buying
28 his personal shares of stock in Calumet and not company owned shares;
- Mr. Patton failed to adequately disclose Calumet's financial position to investors;

- Mr. Patton failed to disclose the risks related to an investment in Calumet; and
- Mr. Patton failed to disclose that investor funds were being utilized to pay his personal expenses, his salary, and rent for his allowing the slag pile to remain on his and his aunt's property in South Dakota.

132. Based on the record, there is no evidence that any profits have been earned from the investments made in Calumet.

133. We find that the record establishes that Mr. Patton collected at least \$450,000 from investors from the sale of his shares of stock in Calumet and while there is evidence that some of these funds were utilized for Calumet's business expenses⁴, there is also evidence that investor funds were utilized for Mr. Patton's personal and household expenses.

134. The evidence establishes that a significant number of investors personally dealt with Mr. Patton, whether through his personal sale of Calumet stock to them or during his presentations at shareholder meetings. However, no rebuttal evidence was presented by the Division to contravene Mr. Patton's claims that the plans and operations of Calumet originated with other investors/shareholders who are from the Phoenix area and could have been called as witnesses in the proceeding.

135. Under the circumstances herein, we agree with the Division's recommendation that a cease and desist order should be issued against Mr. Patton and that he should be held liable for up to \$450,000 in restitution jointly and severally to Calumet's investors whose funds were deposited into his personal accounts. However, in this situation, we believe that the Division's request for an administrative penalty in the amount of \$270,000 is unreasonable based on the evidence and will order a reduced amount hereinafter which we deem to be in balance with those of the previous Consent Orders⁵ which amount shall be subject to further reduction should restitution be made in full as ordered hereinafter.

⁴ Although there is evidence that Mr. Patton expended monies from his accounts on behalf of Calumet and may, in fact, have promissory notes in his favor from Calumet, this recourse will have to be pursued outside of this proceeding. However, any amounts which Calumet owes Mr. Patton for loans, if any, should not be applied as a set-off to reduce the amount due for restitution which he owes to investors.

⁵ In Decision No. 62921, Respondent Crawford was ordered to pay an administrative penalty in the amount of \$15,000. In Decision No. 62922, Respondent Hunzinger was ordered to pay an administrative penalty in the amount of \$10,000.

CONCLUSIONS OF LAW

1
2 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
3 Arizona Constitution and A.R.S. § 44-1801, et seq.

4 2. The investments in the Calumet shares offered and sold by Mr. Patton were securities
5 within the meaning of A.R.S. § 44-1801 (26).

6 3. The securities were neither registered nor exempt from registration, in violation of
7 A.R.S. § 44-1841.

8 4. The actions and conduct of Mr. Patton constitute the offer and/or sale of securities
9 within the meaning of A.R.S. §§ 44-1801(15) and 44-1801(21).³

10 5. Respondent Mr. Patton offered and/or sold unregistered securities within or from
11 Arizona in violation of A.R.S. § 44-1841.

12 6. Respondent Mr. Patton is a dealer or salesman within the meaning of A.R.S. §§ 44-
13 1801(9) and 44-1801(22).

14 7. Respondent Mr. Patton offered and/or sold securities within or from Arizona without
15 being registered as a dealer or salesman in violation of A.R.S. § 44-1842.

16 8. Respondent Mr. Patton violated the anti-fraud provisions of A.R.S. § 44-1991 in the
17 manner set forth hereinabove.

18 9. Respondent Mr. Patton is found to have violated the Act, and should cease and desist
19 pursuant to A.R.S. § 44-2032 from any future violations of A.R.S. §§ 44-1841, 44-1842 and 44-1991
20 and all other provisions of the Act.

21 10. Mr. Patton should be jointly and severely liable with the other Respondents named in
22 this proceeding to make restitution pursuant to A.R.S. § 44-2032 and AAC R14-4-308 up to
23 \$450,000 subject to any legal set-offs.

24 11. With respect to the Calumet offering, Mr. Patton should be assessed an administrative
25 penalty pursuant to A.R.S. § 44-2026 as follows: for the violation of A.R.S. § 44-1841 in the sum of
26 \$10,000; for the violation of A.R.S. § 44-1842, the sum of \$10,000; and for the violation of A.R.S. §
27 44-1991 the sum of \$20,000.
28

ORDER

IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission in A.R.S. § 44-2032, Respondent Gareth M. Patton shall cease and desist from his actions described hereinabove in violation of A.R.S. §§ 44-1841, 44-1842 and 44-1991.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2036, Respondent Gareth M. Patton shall pay as and an administrative penalty for the violation of A.R.S. § 44-1841 the sum of \$10,000, for the violation of A.R.S. § 44-1842 the sum of \$10,000 and for the violation of A.R.S. § 44-1991 the sum of \$20,000.

IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall be made payable to the State Treasurer for deposit in the general fund for the State of Arizona.

IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall bear interest at the rate of ten percent per year for any outstanding balance after 60 days from the effective date of this Decision.

IT IS FURTHER ORDERED that the administrative penalties assessed hereinabove against Respondent Gareth M. Patton shall be reduced to \$5,000 per statutory violation if restitution is made in accordance with the terms of this Decision hereinafter.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondent Gareth M. Patton jointly and severally shall make restitution in an amount not to exceed \$450,000 which restitution shall be made pursuant to A.A.C. R14-4-308, subject to any legal set-offs by any other Respondents and confirmed by the Director of Securities, said restitution to be made within 60 days of the effective date of this Decision.

IT IS FURTHER ORDERED that the restitution ordered hereinabove shall bear interest at the rate of ten percent per year for the period from the date of investment to the date of payment of restitution by Respondent Gareth M. Patton.

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1 IT IS FURTHER ORDERED that all restitution payments ordered hereinabove shall be
2 deposited into an interest-bearing account(s), if appropriate, until distributions are made.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5
6
7 CHAIRMAN

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10 COMMISSIONER

11
12
13 COMMISSIONER

14 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
15 Secretary of the Arizona Corporation Commission, have
16 hereunto set my hand and caused the official seal of the
17 Commission to be affixed at the Capitol, in the City of Phoenix,
18 this 25th day of July, 2001.

19
20
21 BRIAN C. McNEIL
22 EXECUTIVE SECRETARY

23
24
25 DISSENT
26 MES:mlj

1 SERVICE LIST FOR:

CALUMET SLAG, INC.

2 DOCKET NO.:

S-03361A-00-0000

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